

UNITED STATES COURT OF APPEALS

OCT 5 2004

TENTH CIRCUIT

PATRICK FISHER
Clerk

HAROLD D. HORNSBY,

Petitioner-Appellant,

v.

EDWARD L. EVANS, JR.,

Respondent-Appellee.

No. 04-5061

(D.C. No. 95-CV-940-B)

(N.D. Okla.)

ORDER

Before **BRISCOE, McKAY**, and **HARTZ**, Circuit Judges.

This is a *pro se* state prisoner appeal from the district court's denial of Petitioner's "Motion Requesting Leave of Court to Re-Open and File Amended Petition for Writ of Habeas Corpus in 95-CIV-940." Petitioner's 28 U.S.C. § 2254 petition was denied by the district court in 1996. After denial of the petition, Petitioner filed several motions related to his habeas case, which the district court reviewed in 2001. On August 28, 2001, the district court issued an order denying the motions because full consideration had been given to Petitioner's claims. At that time, Petitioner was advised that his case was closed and that no further papers would be accepted for filing without leave of the court. Then, in the motion underlying the current appeal, Petitioner again sought to re-

open his closed habeas case. The district court denied the motion and repeated its order that no further papers would be accepted for filing without leave of the court. Petitioner appeals.¹ The district court did not act on the issue of certificate of appealability; therefore, it is deemed denied. Petitioner then applied to this court for a certificate of appealability.

In order for this court to grant a certificate of appealability, Petitioner must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2) (2004). To do so, Petitioner must demonstrate “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quotations omitted).

We have carefully reviewed Petitioner’s brief, the district court’s disposition, and the record on appeal. Nothing in the facts, the record on appeal, or Petitioner’s brief raises an issue which satisfies our standard for the grant of a certificate of appealability. For substantially the same reasons as set forth by the district court in its Order of April 2, 2004, we cannot say “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have

¹We note that this case has a long filing history in both the district court and on appeal. This is Petitioner’s sixth appeal to this court related to the underlying district court case 95-CV-940.

been resolved in a different manner.” Id.

We **DENY** Petitioner’s request for a certificate of appealability and **DISMISS** the appeal. Appellant’s motion to file an amended petition for writ of habeas corpus is **DENIED**. The motion to proceed *in forma pauperis* on appeal is **GRANTED**.

Entered for the Court

Monroe G. McKay
Circuit Judge